IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

CRP.No. 664 of 2006()

OPELE.5/1998 of DISTRICT COURT, KASARAGOD

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REVN. PETITIONER: PETITIONER:

ABDUL KAREEM HAJI, AGED 66 YEARS,
S/O.ABDULLA HAJEE, MATTOOL, P.O. MATTOOL,
KASARAGOD DISTRICT.

BY ADV. SMT.R.PADMAKUMARI

RESPONDENT: RESPONDENT:

THE SECRETARY,
K.S.E.B. VYDHYUTHI BHAVAN, PATTOM P.O.,
THIRUVANANTHAPURAM.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/12/2007 ALONG WITH CRP 891/06, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.Nos.664 & 891 of 2006

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Dated this the 6th day of December, 2007.

ORDER

C.R.P.No.664 of 2006 is preferred against the award of the District Judge, Kasaragod in O.P.(Ele) No.5 of 1998 and it is filed by the claimant therein and C.R.P.No.891 of 2006 is filed by the respondent - Kerala State Electricity Board against the very same finding. Revision petitioner, namely, the petitioner before the court below would contend that the court below has seriously erred in arriving at the compensation, which is grossly inadequate for the reason that it has not looked into many of the aspects, which require reconsideration by the court.

2. It is contended that the yield of the trees, the life of the trees, etc. had been grossly underestimated and similarly, the land value in which the diminution of land value calculated is nominal whereas it should have been 100% for the reason that there is absolutely loss of utility. On the other hand, the Board

would contend that the court below has applied the principles laid down in **Kumba Amma** v. **K.S.E.B.** - 2000 (1) K.L.T. 542 whereby the percentage of annuity is taken at 5%. It is also submitted that in the light of the decision of the Apex Court reported in **K.S.E.B.** v. **Livisha** - 2007(3) K.L.T. 1, each case has to be considered on the facts and circumstances of that case. The Apex Court held as follows:

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

In view of the above, I find that the matter requires reconsideration in both the Civil Revision Petitions. Since the

matter is being remanded back after setting aside the award I feel that it is desirable to give a direction to the court below to consider the whole matter afresh.

3. Therefore, the award under challenge is set aside and the matter is remitted back to the court below for deciding the matter afresh after affording equal opportunities to both sides and produce and adduce oral as well as documentary evidence in support of their respective contentions and the court is directed to dispose of the matter in the light of the principles laid down in **K.S.E.B.** v. **Livisha** - 2007(3) K.L.T.1. Parties are directed to appear before the court below on 18.1.2008.

Civil Revision Petitions are disposed of accordingly.

M.N.Krishnan,
Judge.

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